

TTAB
TRADEMARK

Docket No. 058789.9040

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

**In the Matter of Application No. 76/033,895
for the Mark ADVENT NETWORKS**

RECOTON CORPORATION,
Opposer,

v.

ADVENT NETWORKS, INC.,
Applicant.

Opposition No. 91150749



05-24-2004
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

ANSWER TO AMENDED NOTICE OF OPPOSITION

Advent Networks, Inc. ("Applicant") hereby answers the Amended Notice of Opposition (the "Opposition") filed by opposer Electronics Trademark Holding Company, LLC as purported assignee of Recoton Corporation ("Opposer").

Applicant responds to the paragraphs of the Opposition as follows:

In response to the unnumbered introductory paragraph of the Opposition, Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations therein relating to corporate status or address or status as assignee of Recoton Corporation and therefore denies same. Applicant further expressly denies that Opposer will be damaged in any way by the registration of application Serial No. 76/033,895 (the "Application").

1. Applicant denies the allegations of paragraph 1.

2. Applicant denies the allegations of paragraph 2.

3. Applicant admits that a trademark registration exists for the identified mark. Except as so expressly admitted, Applicant lacks knowledge or information without sufficient to form a belief as to the truth of the allegations of paragraph 3 and therefore denies the same.

4. Applicant admits that a trademark registration exists for the identified mark. Except as so expressly admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and therefore denies the same.

5. Applicant admits that Recoton Corporation filed an intent to use trademark application for the goods identified. Except as to expressly admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and therefore denies the same.

6. Applicant admits the allegations of paragraph 6.

7. Applicant denies the allegations of paragraph 7.

8. Applicant denies the allegations of paragraph 8.

9. Applicant denies the allegations of paragraph 9.

10. Applicant denies the allegations of paragraph 10.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 and therefore denies the same.

AFFIRMATIVE DEFENSES

By way of further answer and affirmative defenses, Applicant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

1. The Opposer has failed to demonstrate that the applications and registrations on which this Amended Notice of Opposition is based have been properly assigned.

SECOND AFFIRMATIVE DEFENSE

2. No damage or injury has resulted, will result, or can result to Opposer from registration of Applicant's ADVENT NETWORKS mark for the goods specified in the registration.

THIRD AFFIRMATIVE DEFENSE

3. Applicant's ADVENT NETWORKS mark is not identical in sight, sound or meaning to Opposer's ADVENT mark, Registration No. 1,008,947 for "audio equipment, namely microphones, microphone pre-amplifiers, frequency balance controls, noise reduction units and loudspeakers, tape decks and accessories therefore namely head cleaning tapes and dust covers."

FOURTH AFFIRMATIVE DEFENSE

4. The goods identified in Applicant's pending Application are not competitive with, related to, or even complementary to, any of the goods for which Opposer has registered the ADVENT mark in the United States. Applicant's goods are sold to sophisticated businesses in the telecommunications industry, whereas Opposer sells according to its ADVENT Registration No. 1,008,947 consumer electronic goods, to wit, "audio equipment, namely microphones, microphone pre-amplifiers, frequency balance controls, noise reduction units and loudspeakers, tape decks and accessories therefore namely head cleaning tapes and dust covers."

FIFTH AFFIRMATIVE DEFENSE

5. Applicant is informed and believes, and on that basis alleges, that Opposer's claims are barred by estoppel in that Opposer has not pursued other users and/or registrants of ADVENT based marks in the United States for infringement or opposition even though their use is more related to Opposer's use than the goods for which Applicant seeks to register its mark.

SIXTH AFFIRMATIVE DEFENSE

6. Applicant is informed and believes, and on that basis alleges, that Opposer's claims are barred by laches in that Opposer has not pursued other users of ADVENT based marks for infringement or Opposition even though their use is more related to Opposer's use than the goods for which Applicant seeks to register the mark.

SEVENTH AFFIRMATIVE DEFENSE

7. Given the nature of Applicant's goods, Applicant's goods are not impulse items but sophisticated technological products precluding any likelihood of confusion.

EIGHTH AFFIRMATIVE DEFENSE

8. Given the nature of Applicant's goods, Applicant's customers are sophisticated businesses alone precluding any likelihood of confusion.

NINTH AFFIRMATIVE DEFENSE

9. Opposer's ADVENT mark does not encompass Applicant's goods or services or those related to Applicant's goods or services.

TENTH AFFIRMATIVE DEFENSE

10. Applicant has been using the name ADVENT NETWORKS, INC. since at least as early as 1999 without encountering any actual confusion.

ELEVENTH AFFIRMATIVE DEFENSE

12. Opposer has not demonstrated the requisite good faith intent to maintain any rights in any pending intent to use application.

WHEREFORE APPLICANT PRAYS:

1. That the Board dismiss the Opposition with prejudice;
2. That Application Serial No. 76/033,895 be allowed to proceed to registration; and

3. That any such other and further relief be granted as may be deemed reasonable and appropriate.

Dated: May 19, 2004

Respectfully submitted,

By: 
Rochelle D. Alpert
Attorneys for Applicant Advent Networks, Inc.

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

I hereby certify that the attached Answer to Amended Notice of Opposition (in triplicate), proof of service and receipt verification postcard are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on **May 19, 2004**.

Respectfully submitted,


Print Name: Yelena Lolua

PROOF OF SERVICE BY MAIL

I, Yelena Lolua, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Spear Street Tower, One Market, San Francisco, California 94105.

On **May 19, 2004**, I served a copy(ies) of the following document(s)

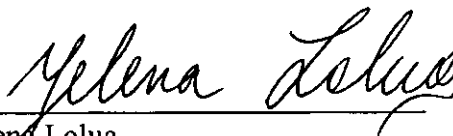
ANSWER TO AMENDED NOTICE OF OPPOSITION

by placing them in a sealed envelope(s) addressed as follows:

Lawrence D. Mandel
Mandel & Peslak, LLC
80 Scenic Drive, Suite 5
Freehold, NJ 07728

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on **May 19, 2004**, at San Francisco, California.



Yelena Lolua